

112TH CONGRESS  
2D SESSION

# H. R. 6575

To amend title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare integrity program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2012

Mr. GRAVES of Missouri (for himself, Mr. SCHIFF, Mr. LONG, and Mr. AKIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare integrity program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Audit Improvement Act of 2012”.

1           (b) TABLE OF CONTENTS.—The table of contents of  
2 this Act is as follows:

See. 1. Short title; table of contents.  
See. 2. Combined additional documentation request limit.  
See. 3. Improvement of recovery auditor operations.  
See. 4. Greater transparency of recovery auditor performance.  
See. 5. Restoring due process rights under the AB rebilling demonstration.  
See. 6. Accurate payment for rebilled claims.  
See. 7. Requirement for physician validation for medical necessity denials.

3 **SEC. 2. COMBINED ADDITIONAL DOCUMENTATION RE-**  
4           **QUEST LIMIT.**

5           (a) ESTABLISHMENT OF ANNUAL LIMITS.—The Sec-  
6 retary of Health and Human Services shall establish a  
7 process under which the number of additional documenta-  
8 tion requests made by a Medicare contractor (as defined  
9 in subsection (b)(1)) pursuant to a complex prepayment  
10 audit or complex postpayment audit under chapter 3 of  
11 the Medicare Program Integrity Manual, or otherwise,  
12 with respect to part A claims (as defined in subsection  
13 (b)(2)) of a hospital in a year may not exceed, across all  
14 such contractors with respect to such claims of such hos-  
15 pital, the lesser of—

16           (1) 2 percent of all such claims for such year;  
17           or  
18           (2) 500 additional documentation requests dur-  
19           ing any 45-day period.

20           (b) DEFINITIONS.—In this section:

21           (1) MEDICARE CONTRACTOR.—The term  
22           “Medicare contractor” means any of the following:

1                         (A) A Medicare administrative contractor  
2                         under section 1874A of the Social Security Act  
3                         (42 U.S.C. 1395kk), including a fiscal inter-  
4                         mediary and a carrier under sections 1816 and  
5                         1842, respectively.

6                         (B) A recovery audit contractor, zone pro-  
7                         gram integrity contractor, and program safe-  
8                         guard or integrity contractor under section  
9                         1893(h) of such Act (42 U.S.C. 1395ddd(h)).

10                         (C) A Comprehensive Error Rate Testing  
11                         (CERT) program contractor with a contract  
12                         with the Secretary of Health and Human Serv-  
13                         ices to review error rates under title XVIII of  
14                         the Social Security Act (42 U.S.C. 1395 et  
15                         seq.).

16                         (2) PART A CLAIM.—The term “part A claim”  
17                         means a claim for payment under part A of title  
18                         XVIII of the Social Security Act (42 U.S.C. 1395c  
19                         et seq.) made by a hospital for furnishing inpatient  
20                         hospital services to individuals entitled to have pay-  
21                         ment made on their behalf under such part A for the  
22                         furnishing of such services.

23                         (3) HOSPITAL.—The term “hospital” has the  
24                         meaning given such term under subsection (e) of  
25                         section 1861 of the Social Security Act (42 U.S.C.

1       1395x), and includes a psychiatric hospital as de-  
2       fined in subsection (f) of such section. In applying  
3       such definition for purposes of this section, such  
4       term means the campus of the hospital, as identified  
5       by the tax identification number of the hospital, and  
6       includes all inpatient hospital facilities under such  
7       number located in the same area.

8       (c) EFFECTIVE DATE.—This section takes effect on  
9       the date of the enactment of this Act and shall apply with  
10      respect to claims submitted for payment under title XVIII  
11      of the Social Security Act for items or services furnished  
12      by providers of services or suppliers on or after January  
13      1, 2013.

14 **SEC. 3. IMPROVEMENT OF RECOVERY AUDITOR OPER-  
15                     ATIONS.**

16       (a) RECOVERY AUDITORS.—

17           (1) IN GENERAL.—Section 1893(h) of the So-  
18       cial Security Act (42 U.S.C. 1395ddd(h)) is amend-  
19       ed by adding at the end the following new para-  
20       graph:

21           “(10) MANDATORY TERMS AND CONDITIONS  
22       UNDER CONTRACTS WITH RECOVERY AUDIT CON-  
23       TRACTORS.—In addition to such other terms and  
24       conditions as the Secretary may require under con-  
25       tracts with recovery audit contractors under this

1 subsection with respect to a hospital, including a  
2 psychiatric hospital (as defined in section 1861(f)),  
3 the Secretary shall ensure each of the following re-  
4 quirements are included under such contracts:

5                 “(A) PENALTIES FOR CERTAIN COMPLI-  
6 ANCE FAILURES.—

7                 “(i) IN GENERAL.—Each such con-  
8 tract shall provide for the imposition of fi-  
9 nancial penalties by the Secretary under  
10 such contract in the case of any recovery  
11 audit contractor with respect to which the  
12 Secretary determines there is a pattern of  
13 failure by such contractor to meet any pro-  
14 gram requirement described in clause (ii).  
15 The Secretary shall establish the amount  
16 of financial penalties and the periodicity  
17 under which such penalties shall be im-  
18 posed under this subparagraph, in no case  
19 less often than annually.

20                 “(ii) PROGRAM REQUIREMENT DE-  
21 SCRIBED.—For purposes of this subpara-  
22 graph, each of the following requirements  
23 under the statement of work for a recovery  
24 audit contractor constitutes a program re-  
25 quirement with respect to which failure to

1                   meet such requirement shall result in the  
2                   imposition of a financial penalty under  
3                   clause (i):

4                   “(I) AUDIT DEADLINE.—Com-  
5                   pleting a determination with respect  
6                   to each audit of a hospital the recov-  
7                   ery audit contractor conducts within  
8                   the timeframes applicable under  
9                   guidelines of the Secretary.

10                  “(II) TIMELY COMMUNICA-  
11                  TION.—In the case of a denial of a  
12                  claim of a hospital, furnishing the  
13                  hospital a demand letter in a timely  
14                  fashion under claims and appeals  
15                  timeframes applicable under guide-  
16                  lines of the Secretary.

17                  “(B) PENALTY FOR OVERTURNED AP-  
18                  PEALS.—

19                  “(i) IN GENERAL.—Each such con-  
20                  tract shall require a recovery audit con-  
21                  tractor to pay a fee to the prevailing party  
22                  in the case of a claim denial that is over-  
23                  turned on appeal.

24                  “(ii) FEE AMOUNT.—The amount of  
25                  the fee payable by a recovery audit con-

1                   tractor to a prevailing party under clause  
 2                   (i) shall be determined under a fee sched-  
 3                   ule established by the Secretary for such  
 4                   purpose.

5                   “(C) POSTPAYMENT AND PREPAYMENT AU-  
 6                   DITS.—

7                   “(i) REQUIRING FOCUS ON WIDE-  
 8                   SPREAD PAYMENT ERRORS.—

9                   “(I) IN GENERAL.—The Sec-  
 10                  retary shall not approve the conduct  
   11                  of a postpayment or prepayment med-  
   12                  ical necessity audit by a recovery  
   13                  audit contractor unless such review  
   14                  addresses a widespread payment error  
   15                  rate (as defined in clause (ii)).

16                  “(II) CESSATION OF AUDIT.—A  
   17                  recovery audit contractor that com-  
   18                  mences an audit under subclause (I)  
   19                  shall cease such audit or any similar  
   20                  audits, if upon annual review, the ap-  
   21                  plicable payment error rate is no  
   22                  longer a widespread payment error  
   23                  rate (as so defined).

24                  “(ii) WIDESPREAD PAYMENT ERROR  
 25                  RATE DEFINED.—

1                         “(I) IN GENERAL.—In this sub-  
2                         paragraph, the term ‘widespread pay-  
3                         ment error rate’ means, with respect  
4                         to medical necessity reviews conducted  
5                         by a recovery audit contractor, a pay-  
6                         ment error rate that exceeds the rate  
7                         specified in subclause (II) for a par-  
8                         ticular medical necessity audit deter-  
9                         mined by the Secretary using a statis-  
10                         tically significant sampling of claims  
11                         submitted by hospitals in the jurisdic-  
12                         tion of the recovery audit contractor  
13                         and adjusted to take into account  
14                         claim denials overturned on appeal.

15                         “(II) RATE SPECIFIED.—The  
16                         rate specified in this subclause is 40  
17                         percent, except that the Secretary  
18                         shall annually evaluate such rate and  
19                         reduce it as necessary to account for  
20                         changes in payment error rates with  
21                         the aim of continued, steady improve-  
22                         ment of billing practices.

23                         “(D) GUIDELINES FOR PREPAYMENT RE-  
24                         VIEW.—

1                     “(i) IN GENERAL.—A recovery audit  
2 contractor may only conduct prepayment  
3 review in the manner provided under pre-  
4 payment review guidelines (described in  
5 clause (ii)) established by the Secretary.

6                     “(ii) CONSISTENT PREPAYMENT RE-  
7 VIEW GUIDELINES.—For purposes of pre-  
8 payment review activities authorized under  
9 this subsection and section 1874A(h) (re-  
10 lating to prepayment review by medicare  
11 administrative contractors), the Secretary  
12 shall establish guidelines under which con-  
13 sistent criteria for minimum payment error  
14 rates or improper billing practices occasion  
15 prepayment review by contractors under  
16 this subsection and section 1874A. Such  
17 guidelines shall include criteria for termi-  
18 nation, including termination dates, of pre-  
19 payment review.”.

20                     (2) CONFORMING AMENDMENT TO APPLY FI-  
21 NANCIAL PENALTIES IMPOSED ON RECOVERY CON-  
22 TRACTORS TO THE TRUST FUNDS.—Section  
23 1893(h)(2) of the Social Security Act (42 U.S.C.  
24 1395ddd(h)(2)) is amended by inserting “, and  
25 amounts collected by the Secretary under paragraph

1       (10)(A)(i) (relating to financial penalties for con-  
2       tractor compliance failures)," after "paragraph  
3       (1)(C)".

4       (b) CONFORMING AMENDMENT FOR MEDICARE AD-  
5       MINISTRATIVE CONTRACTORS.—Section 1874A of the So-  
6       cial Security Act (42 U.S.C. 1395kk-1) is amended by  
7       adding at the end the following new subsection:

8            “(h) MANDATORY TERMS AND CONDITIONS UNDER  
9       CONTRACTS WITH MEDICARE ADMINISTRATIVE CON-  
10      TRACTORS.—In addition to such other terms and condi-  
11      tions as the Secretary may require under contracts with  
12      medicare administrative contractors under this section  
13      with respect to a hospital, including a psychiatric hospital  
14      (as defined in section 1861(f)), the Secretary shall ensure  
15      each of the following requirements are included under  
16      such contracts:

17            “(1) POSTPAYMENT AND PREPAYMENT AU-  
18      DITS.—

19            “(A) REQUIRING FOCUS ON WIDESPREAD  
20      PAYMENT ERRORS.—

21            “(i) IN GENERAL.—The Secretary  
22      shall not approve the conduct of a  
23      postpayment or prepayment medical neces-  
24      sity audit by a medicare administrative  
25      contractor unless such review addresses a

1                   widespread payment error rate (as defined  
2                   in subparagraph (B)).

3                   “(ii) CESSATION OF AUDIT.—A medi-  
4                   care administrative contractor that com-  
5                   mences an audit under clause (i) shall  
6                   cease such audit or any similar audits, if  
7                   upon annual review, the applicable pay-  
8                   ment error rate is no longer a widespread  
9                   payment error rate (as so defined).

10                  “(B) WIDESPREAD PAYMENT ERROR RATE  
11                 DEFINED.—In this paragraph, the term ‘wide-  
12                 spread payment error rate’ means, with respect  
13                 to medical necessity reviews conducted by a  
14                 medicare administrative contractor, a payment  
15                 error rate of 40 percent or greater for a par-  
16                 ticular medical necessity audit determined by  
17                 the Secretary using a statistically significant  
18                 sampling of claims submitted by hospitals in  
19                 the jurisdiction of the medicare administrative  
20                 contractor and adjusted to take into account  
21                 claim denials overturned on appeal.

22                  “(2) GUIDELINES FOR PREPAYMENT REVIEW.—  
23                 A medicare administrative contractor may only con-  
24                 duct prepayment review in the manner provided

1       under prepayment review guidelines established by  
2       the Secretary under section 1893(h)(10)(D)(ii).”.

3       (c) EFFECTIVE DATE.—The amendments made by  
4   this section shall apply to contracts entered into or re-  
5   newed with recovery audit contractors under section  
6   1893(h) of the Social Security Act (42 U.S.C.  
7   1395ddd(h)) and medicare administrative contractors  
8   under section 1874A of the Social Security Act (42 U.S.C.  
9   1395kk–1) on or after the date of the enactment of this  
10   Act.

11   **SEC. 4. GREATER TRANSPARENCY OF RECOVERY AUDITOR**

12                   **PERFORMANCE.**

13       (a) ANNUAL PUBLICATION OF RELEVANT PERFORM-  
14       ANCE INFORMATION.—Section 1893(h) of the Social Secu-  
15       rity Act (42 U.S.C. 1395ddd(h)), as amended by section  
16       3(a), is further amended by adding at the end the fol-  
17       lowing new paragraph:

18                   “(11) INFORMATION ON RECOVERY AUDIT CON-  
19                   TRACTOR PERFORMANCE.—With respect to each re-  
20                   covery audit contractor with a contract under this  
21                   section for a contract year, the Secretary shall pub-  
22                   lish on the Internet website of the Centers for Medi-  
23                   care & Medicaid Services the following information  
24                   with respect to the performance of each such recov-  
25                   ery audit contractor:

1                     “(A) PUBLICLY AVAILABLE INFORMATION  
2                     ON AUDIT RATES, DENIALS, AND APPEALS OUT-  
3                     COMES.—With respect to the performance of  
4                     each such recovery audit contractor during a  
5                     contract year, the Secretary shall post on such  
6                     Internet website the following information:

7                         “(i) AUDITS.—The aggregate number  
8                     of audits conducted by the recovery audit  
9                     contractor during the contract year in-  
10                     volved, as well as the number of audits of  
11                     each of the following audit types (each in  
12                     this paragraph referred to as an ‘audit  
13                     type’):

14                         “(I) Automated.

15                         “(II) Complex.

16                         “(III) Medical necessity review.

17                         “(IV) Part A claims.

18                         “(V) Part B claims.

19                         “(VI) Durable medical equipment  
20                     claims.

21                         “(VII) Part A medical necessity.

22                         “(ii) DENIALS.—The aggregate num-  
23                     ber of denials for each audit type made by  
24                     the recovery audit contractor during the  
25                     contract year involved.

1                 “(iii) DENIAL RATES.—The denial  
2                 rate of the recovery audit contractor dur-  
3                 ing the contract year involved for part A  
4                 claims, part B claims, and durable medical  
5                 equipment claims.

6                 “(iv) APPEALS.—The aggregate num-  
7                 ber of appeals filed by providers of services  
8                 and suppliers with respect to denials for  
9                 each audit type made by the recovery audit  
10                contractor during the contract year in-  
11                volved.

12                “(v) APPEALS RATES.—The aggregate  
13                rate of appeals filed by providers of serv-  
14                ices and suppliers with respect to denials  
15                for each audit type made by the recovery  
16                audit contractor during the contract year  
17                involved.

18                “(vi) APPEALS OUTCOMES AT EACH  
19                OF THE 5 STAGES OF APPEAL.—The out-  
20                come of each appeal filed by a provider of  
21                services or supplier of a denial made by a  
22                recovery audit contractor at each level of  
23                appeal as follows:

24                “(I) Reconsideration by the rel-  
25                evant medicare contractor.

1                         “(II) Redetermination by a qual-  
2                         fied independent contractor.

3                         “(III) Administrative law judge  
4                         hearing.

5                         “(IV) Medicare Appeals Council  
6                         review.

7                         “(V) United States District  
8                         Court judicial review.

9                         “(vii) NET DENIALS.—The net denial  
10                         for each audit type, calculated as the dif-  
11                         ference between the number of denials for  
12                         such audit type under clause (ii) and the  
13                         number of denials for such audit type over-  
14                         turned on appeal.

15                         “(B) PUBLIC AVAILABILITY OF INDE-  
16                         PENDENT PERFORMANCE EVALUATION.—The  
17                         Secretary shall make available on such Internet  
18                         website the results of any performance evalua-  
19                         tion with respect to each recovery audit con-  
20                         tractor conducted by an independent entity se-  
21                         lected by the Secretary for such purpose. Each  
22                         performance evaluation shall include in its re-  
23                         sults for posting on such Internet website a de-  
24                         termination of annual error rates of the recov-  
25                         ery audit contractor for each audit type and the

1           net denials described in subparagraph  
2           (A)(vii).”.

3       (b) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) shall apply to contracts entered into or re-  
5 newed with recovery audit contractors under section  
6 1893(h) of the Social Security Act (42 U.S.C.  
7 1395ddd(h)) on or after the date of the enactment of this  
8 Act.

9 **SEC. 5. RESTORING DUE PROCESS RIGHTS UNDER THE AB**

10           **REBILLING DEMONSTRATION.**

11       (a) CLARIFICATION OF AVAILABILITY OF ALL AP-  
12 PEAL RIGHTS.—In conducting the AB Rebilling Dem-  
13 onstration (as defined in subsection (b)), the Secretary of  
14 Health and Human Services may not prohibit any appeal  
15 from, or any form of appeal available to, a hospital with  
16 respect to the inpatient hospital services furnished for  
17 which payment may be made under part A of title XVIII  
18 of the Social Security Act for which the claim submitted  
19 by such hospital was denied as an inpatient admission by  
20 a recovery auditor with a contract under section 1893(h)  
21 of such Act (42 U.S.C. 1395ddd(h)) due to a finding by  
22 the contractor that the inpatient admission was not rea-  
23 sonable and medically necessary.

24       (b) AB REBILLING DEMONSTRATION DEFINED.—In  
25 this section, the term “AB Rebilling Demonstration”

1 means the Medicare Part A to Part B Rebilling (AB Re-  
2 billing) Demonstration conducted during calendar years  
3 2012 through 2014 by the Secretary of Health and  
4 Human Services through the Administrator of the Centers  
5 for Medicare & Medicaid Services under which a hospital  
6 with a participation agreement under the Medicare pro-  
7 gram may receive 90 percent of the allowable part B pay-  
8 ment for part A short-stay claims that are denied on the  
9 basis that the inpatient admission was not reasonable and  
10 necessary.

**11 SEC. 6. ACCURATE PAYMENT FOR REBILLED CLAIMS.**

12 (a) REBILLING UNDER PART B INPATIENT CLAIMS  
13 DENIED BASED ON SITE OF SERVICE WHERE SERVICES  
14 FOUND MEDICALLY NECESSARY AT THE OUTPATIENT  
15 LEVEL.—

16 (1) RECOVERY AUDITORS.—Section 1893(h) of  
17 the Social Security Act (42 U.S.C. 1395ddd(h)), as  
18 amended by sections 3(a) and 4(a), is further  
19 amended by adding at the end the following new  
20 paragraph:

21 “(12) TREATMENT OF RESUBMISSION OF SPEC-  
22 IFIED CLAIMS AS ORIGINAL CLAIMS.—

23 “(A) TREATMENT AS ORIGINAL CLAIM.—  
24 The resubmission of a specified claim (as de-

1           fined in subparagraph (C)) shall be deemed to  
2           be an original claim for purposes of—

3                 “(i) payment under part B; and  
4                 “(ii) provisions under this title relat-  
5                 ing to—

6                 “(I) the authority of a hospital to  
7                 resubmit a claim for payment under  
8                 the appropriate section of this title;  
9                 and

10                 “(II) requirements for the timely  
11                 submission of claims, including under  
12                 sections 1814(a), 1842(b)(3), and  
13                 1835(a).

14                 “(B) PAYMENT FOR ITEMS AND SERVICES  
15                 UNDER RESUBMITTED CLAIM.—Payment shall  
16                 be made for a specified claim resubmitted under  
17                 subparagraph (A) for all the items and services  
18                 furnished for which payment may be made  
19                 under part B.

20                 “(C) DEFINITIONS.—In this paragraph:

21                 “(i) SPECIFIED CLAIM.—The term  
22                 ‘specified claim’ means a claim submitted  
23                 by a hospital for payment under part A for  
24                 inpatient hospital services which a recovery  
25                 audit contractor determines—

1                         “(I) the inpatient hospital serv-  
2                         ices were not medically necessary and  
3                         reasonable under section  
4                         1862(a)(1)(A) based on site of serv-  
5                         ice; and

6                         “(II) the services furnished would  
7                         be medically necessary and reasonable  
8                         in an outpatient setting of the hos-  
9                         pital.

10                         “(ii) RESUBMISSION.—The term ‘re-  
11                         submission’ includes, with respect to a  
12                         specified claim of a hospital, the submis-  
13                         sion by the hospital of a new claim or of  
14                         an adjusted original claim.”.

15                         (2) CONFORMING AMENDMENT FOR MEDICARE  
16                         ADMINISTRATIVE CONTRACTORS.—Subsection (h) of  
17                         section 1874A of the Social Security Act (42 U.S.C.  
18                         1395kk–1), as added by section 3(b), is further  
19                         amended by adding at the end the following new  
20                         paragraph:

21                         “(3) TREATMENT OF RESUBMISSION OF SPECI-  
22                         FIED CLAIMS AS ORIGINAL CLAIMS.—

23                         “(A) TREATMENT AS ORIGINAL CLAIM.—  
24                         The resubmission of a specified claim (as de-

1                   fined in subparagraph (C)) shall be deemed to  
2                   be an original claim for purposes of—

3                         “(i) payment under part B; and  
4                         “(ii) provisions under this title relat-  
5                         ing to—

6                         “(I) the authority of a hospital to  
7                         resubmit a claim for payment under  
8                         the appropriate section of this title;  
9                         and

10                         “(II) requirements for the timely  
11                         submission of claims, including under  
12                         sections 1814(a), 1842(b)(3), and  
13                         1835(a).

14                         “(B) PAYMENT FOR ITEMS AND SERVICES  
15                         UNDER RESUBMITTED CLAIM.—Payment shall  
16                         be made for a specified claim resubmitted under  
17                         subparagraph (A) for all the items and services  
18                         furnished for which payment may be made  
19                         under part B.

20                         “(C) DEFINITIONS.—In this paragraph:

21                         “(i) SPECIFIED CLAIM.—The term  
22                         ‘specified claim’ means a claim submitted  
23                         by a hospital for payment under part A for  
24                         inpatient hospital services which a medi-

1           care administrative contractor deter-  
2           mines—

3                 “(I) the inpatient hospital serv-  
4                 ices were not medically necessary and  
5                 reasonable under section  
6                 1862(a)(1)(A) based on site of serv-  
7                 ice; and

8                 “(II) the services furnished would  
9                 be medically necessary and reasonable  
10                in an outpatient setting of the hos-  
11                pital.

12                 “(ii) RESUBMISSION.—The term ‘re-  
13                 submission’ includes, with respect to a  
14                 specified claim of a hospital, the submis-  
15                 sion by the hospital of a new claim or of  
16                 an adjusted original claim.”.

17                 (3) CONFORMING REQUIREMENT FOR CERT  
18                 CONTRACTORS.—

19                 (A) TREATMENT OF RESUBMISSION OF  
20                 SPECIFIED CLAIMS AS ORIGINAL CLAIMS.—A  
21                 Comprehensive Error Rate Testing (CERT)  
22                 program contractor with a contract with the  
23                 Secretary of Health and Human Services to re-  
24                 view error rates under title XVIII of the Social  
25                 Security Act (42 U.S.C. 1395 et seq.) shall

1       deem the resubmission of a specified claim (as  
2       defined in subparagraph (C)) as an original  
3       claim for purposes of—

4                 (i) payment under part B of such title

5                   XVII; and

6                 (ii) provisions under such title relating

7                   to—

8                         (I) the authority of a hospital to  
9        resubmit a claim for payment under  
10      the appropriate section of such title;  
11      and

12                         (II) requirements for the timely  
13      submission of claims, including under  
14      sections 1814(a), 1842(b)(3), and  
15      1835(a) of such Act (42 U.S.C.  
16      1395f(a), 1395u(b)(3), and 1395n(a),  
17      respectively).

18                 (B) PAYMENT FOR ITEMS AND SERVICES  
19      UNDER RESUBMITTED CLAIM.—Payment shall  
20      be made for a specified claim resubmitted under  
21      subparagraph (A) for all the items and services  
22      furnished for which payment may be made  
23      under part B of such title XVIII.

24                 (C) DEFINITIONS.—In this paragraph:

1                                     (i) SPECIFIED CLAIM.—The term  
2                                     “specified claim” means a claim submitted  
3                                     by a hospital (as defined in section 1861(e)  
4                                     of such Act (42 U.S.C. 1395x(e))) for pay-  
5                                     ment under title XVIII of such Act for in-  
6                                     patient hospital services which a Com-  
7                                     prehensive Error Rate Testing (CERT)  
8                                     program contractor determines—

9                                     (I) the inpatient hospital services  
10                                     were not medically necessary and rea-  
11                                     sonable under section 1862(a)(1)(A)  
12                                     of such Act based on site of service;  
13                                     and

14                                     (II) the services furnished would  
15                                     be medically necessary and reasonable  
16                                     in an outpatient setting of the hos-  
17                                     pital.

18                                     (ii) RESUBMISSION.—The term “re-  
19                                     submission” includes, with respect to a  
20                                     specified claim of a hospital, the submis-  
21                                     sion by the hospital of a new claim or of  
22                                     an adjusted original claim.

23                                     (4) EFFECTIVE DATE.—The amendments made  
24                                     by paragraphs (1) and (2), and the provisions of  
25                                     paragraph (3), shall apply to contracts entered into

1 or renewed with recovery audit contractors under  
2 section 1893(h) of the Social Security Act (42  
3 U.S.C. 1395ddd(h)), medicare administrative con-  
4 tractors under section 1874A of the Social Security  
5 Act (42 U.S.C. 1395kk–1) and Comprehensive Error  
6 Rate Testing (CERT) program contractors, respec-  
7 tively, on or after the date of the enactment of this  
8 Act.

9 (b) TREATMENT OF AUDITED CLAIMS AS RE-  
10 OPENED.—

11 (1) RECOVERY AUDITORS.—Section 1893(h)(4)  
12 of the Social Security Act (42 U.S.C.  
13 1395ddd(h)(4)) is amended by adding after and  
14 below subparagraph (B) the following:

15 “For purposes of the ability of a hospital to resub-  
16 mit a claim for payment under the appropriate sec-  
17 tion of this title and for purposes of requirements  
18 for the timely submission of claims by hospitals, in-  
19 cluding under sections 1814(a), 1842(b)(3), and  
20 1835(a), any claim that is the subject of an audit  
21 by a recovery audit contractor with a contract under  
22 this section shall be deemed to be a reopened  
23 claim.”.

24 (2) CONFORMING AMENDMENT FOR MEDICARE  
25 ADMINISTRATIVE CONTRACTORS.—Section 1874A(h)

1 of the Social Security Act (42 U.S.C. 1395kk–1(h)),  
2 as added by section 3(b) and as amended by sub-  
3 section (a)(2), is further amended by adding at the  
4 end the following new paragraph:

5       “(4) TREATMENT OF AUDITED CLAIMS AS RE-  
6 OPENED.—For purposes of the ability of a hospital  
7 to resubmit a claim for payment under the appro-  
8 priate provisions of this title and for purposes of re-  
9 quirements for the timely submission of claims by  
10 hospitals, including under sections 1814(a),  
11 1842(b)(3), and 1835(a), any claim that is the sub-  
12 ject of an audit by a medicare administrative con-  
13 tractor with a contract under this section shall be  
14 deemed to be a reopened claim.”.

15           (3) CONFORMING REQUIREMENT FOR CERT  
16 CONTRACTORS.—

17           (A) TREATMENT OF AUDITED CLAIMS AS  
18 REOPENED.—Any claim made for payment for  
19 services furnished by a hospital under title  
20 XVIII of the Social Security Act (42 U.S.C.  
21 1395 et seq.) that is the subject of an audit by  
22 a Comprehensive Error Rate Testing (CERT)  
23 program contractor with a contract with the  
24 Secretary of Health and Human Services shall  
25 be deemed to be a reopened claim for purposes

1           of the ability of such hospital to resubmit a  
2           claim for payment under the appropriate provi-  
3           sions of such title XVIII and for purposes of re-  
4           quirements for the timely submission of claims  
5           by hospitals under such title XVIII, including  
6           under sections 1814(a), 1842(b)(3), and  
7           1835(a) of the Social Security Act (42 U.S.C.  
8           1395f(a), 1395u(b)(3), and 1395n(a), respec-  
9           tively).

10           (B) DEFINITION.—In this paragraph, the  
11           term “hospital” has the meaning given such  
12           term in subsection (e) of section 1861 of the  
13           Social Security Act (42 U.S.C. 1395x), and in-  
14           cludes a psychiatric hospital as defined in sub-  
15           section (f) of such section.

16           (4) EFFECTIVE DATE.—The amendments made  
17           by paragraphs (1) and (2), and the provisions of  
18           paragraph (3), shall take effect on the date of the  
19           enactment of this Act and apply to claims subject to  
20           audit on or after September 1, 2010.

21           **SEC. 7. REQUIREMENT FOR PHYSICIAN VALIDATION FOR**  
22           **MEDICAL NECESSITY DENIALS.**

23           (a) RECOVERY AUDITORS.—Section 1893(h) of the  
24           Social Security Act (42 U.S.C. 1395ddd(h)), as amended

1 by sections 3(a), 4(a), and 6(a)(1), is further amended by  
2 adding at the end the following new paragraph:

3                 “(13) PHYSICIAN VALIDATION OF MEDICAL NE-  
4                 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-  
5                 ERS.—

6                 “(A) IN GENERAL.—Each contract under  
7                 this section for a recovery audit contractor shall  
8                 require that a physician (as defined in section  
9                 1861(r)(1)) review each denial of a claim for  
10                 medical necessity when a medical necessity re-  
11                 view of such claim is performed and a denial is  
12                 made by an employee of the contractor who is  
13                 not a physician (as so defined).

14                 “(B) DETERMINATION; VALIDATION.—A  
15                 physician reviewing a claim under subparagraph  
16                 (A) shall—

17                 “(i) make a determination whether  
18                 the denial of the claim under the medical  
19                 necessity review by the non-physician em-  
20                 ployee is appropriate;

21                 “(ii) sign and certify such determina-  
22                 tion; and

23                 “(iii) append such signed and certified  
24                 determination to the claim file.

1                 “(C) TREATMENT AS MEDICALLY NEC-  
2                 ESSARY.—A claim with respect to which a de-  
3                 nial has been made as described in subpara-  
4                 graph (A) for which the physician determines  
5                 the denial is not appropriate under subpara-  
6                 graph (B) shall be deemed to be medically nec-  
7                 essary.

8                 “(D) MEDICAL NECESSITY REVIEW DE-  
9                 FINED.—In this paragraph, the term ‘medical  
10                 necessity review’ means, with respect to an  
11                 audit of a claim of a provider of services or sup-  
12                 plier, a review conducted by a recovery audit  
13                 contractor for the purpose of determining  
14                 whether an item or service furnished for which  
15                 the claim is filed by such provider of services or  
16                 supplier is reasonable and necessary for the di-  
17                 agnosis or treatment of illness or injury under  
18                 section 1862(a)(1)(A).”.

19                 (b) CONFORMING AMENDMENT TO MEDICARE AD-  
20                 MINISTRATIVE CONTRACTORS.—Subsection (h) of section  
21                 1874A of the Social Security Act (42 U.S.C. 1395kk–1),  
22                 as added by section 3(b) and as amended by subsections  
23                 (a)(2) and (b)(2) of section 6, is further amended by add-  
24                 ing at the end the following new paragraph:

1                 “(5) PHYSICIAN VALIDATION OF MEDICAL NE-  
2 CESSITY DENIALS MADE BY NON-PHYSICIAN REVIEW-  
3 ERS.—

4                 “(A) IN GENERAL.—A physician (as de-  
5 fined in section 1861(r)(1)) shall review each  
6 denial of a claim for medical necessity when a  
7 medical necessity review of such claim is per-  
8 formed and a denial is made by an employee of  
9 the contractor who is not a physician (as so de-  
10 fined).

11                 “(B) DETERMINATION; VALIDATION.—A  
12 physician reviewing a claim under subparagraph  
13 (A) shall—

14                 “(i) make a determination whether  
15 the denial of the claim under the medical  
16 necessity review by the non-physician em-  
17 ployee is appropriate;

18                 “(ii) sign and certify such determina-  
19 tion; and

20                 “(iii) append such signed and certified  
21 determination to the claim file.

22                 “(C) TREATMENT AS MEDICALLY NEC-  
23 ESSARY.—A claim with respect to which a de-  
24 nial has been made as described in subpara-  
25 graph (A) for which the physician determines

1           the denial is not appropriate under subparagraph  
2           (B) shall be deemed to be medically nec-  
3           essary.

4           “(D) MEDICAL NECESSITY REVIEW DE-  
5           FINED.—In this paragraph, the term ‘medical  
6           necessity review’ means, with respect to an  
7           audit of a claim of a provider of services or sup-  
8           plier, a review conducted by a medicare admin-  
9           istrative contractor for the purpose of deter-  
10          mining whether an item or service furnished for  
11          which the claim is filed by such provider of  
12          services or supplier is reasonable and necessary  
13          for the diagnosis or treatment of illness or in-  
14          jury under section 1862(a)(1)(A).”.

15         (c) CONFORMING REQUIREMENT FOR CERT CON-  
16         TRACTORS.—

17           (1) CONTRACT REQUIREMENT FOR PHYSICIAN  
18           VALIDATION OF MEDICAL NECESSITY DENIALS MADE  
19           BY NON-PHYSICIAN REVIEWERS.—The Secretary of  
20           Health and Human Services shall require under  
21           each contract with a Comprehensive Error Rate  
22           Testing (CERT) program contractor to review error  
23           rates under title XVIII of the Social Security Act  
24           (42 U.S.C. 1395 et seq.) that the CERT program  
25           contractor ensure that a physician (as defined in

1       section 1861(r)(1) of such Act (42 U.S.C.  
2       1395x(r)(1))) reviews each denial of a claim for  
3       medical necessity when a medical necessity review of  
4       such claim is performed and a denial is made by an  
5       employee of the contractor who is not a physician  
6       (as so defined).

7                     (2) DETERMINATION; VALIDATION.—A physi-  
8       cian reviewing a claim under paragraph (1) shall—

9                         (A) make a determination whether the de-  
10       nial of the claim under the medical necessity re-  
11       view by the non-physician employee is appro-  
12       priate;

13                         (B) sign and certify such determination;  
14       and

15                         (C) append such signed and certified deter-  
16       mination to the claim file.

17                     (3) TREATMENT AS MEDICALLY NECESSARY.—  
18       A claim with respect to which a denial has been  
19       made as described in paragraph (1) for which the  
20       physician determines the denial is not appropriate  
21       under paragraph (2) shall be deemed to be medically  
22       necessary.

23                     (4) MEDICAL NECESSITY REVIEW DEFINED.—  
24       In this subsection, the term “medical necessity re-  
25       view” means, with respect to an audit of a claim of

1       a provider of services or supplier, a review conducted  
2       by a CERT program contractor for the purpose of  
3       determining whether an item or service furnished for  
4       which the claim is filed by such provider of services  
5       or supplier is reasonable and necessary for the diag-  
6       nosis or treatment of illness or injury under section  
7       1862(a)(1)(A) of the Social Security Act (42 U.S.C.  
8       1395y(a)(1)(A)).

9       (d) EFFECTIVE DATE.—The amendments made by  
10      subsections (a) and (b), and the provisions of subsection  
11      (c), shall apply to contracts entered into or renewed with  
12      recovery audit contractors under section 1893(h) of the  
13      Social Security Act (42 U.S.C. 1395ddd(h)), medicare ad-  
14      ministrative contractors under section 1874A of the Social  
15      Security Act (42 U.S.C. 1395kk–1) and Comprehensive  
16      Error Rate Testing (CERT) program contractors, respec-  
17      tively, on or after the date of the enactment of this Act.

